

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: September 6-7, 2006

Reference No.: 2.5g.
Action Item

From: CINDY McKIM
Chief Financial Officer

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Division Chief
Division of Budgets

Subject: **AUGMENTATION TO ANNUAL FY 2006-07 RIGHT OF WAY LUMP SUM ALLOCATION
RESOLUTION FM-06-01, AMENDING RESOLUTION FM-05-05**

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) approve the following Resolution to increase the FY 2006-07 lump sum Right-of-Way (R/W) capital allocation of \$188,000,000 by \$81,000,000, for a total of \$269,000,000.

ISSUE:

When the FY 2006-07 lump sum allocation request of \$188,000,000 was approved on June 8, 2006, under Resolution FM-05-05, a property damage claim for a State Route (SR) 144 slide in Santa Barbara County was in litigation. The claim has since been settled, and an augmentation of \$81,000,000 is needed to the FY 2006-07 Lump Sum R/W Allocation.

BACKGROUND:

In January 2005, after a period of concentrated rain, a hillside in Santa Barbara County adjacent to SR 144 began to slide on property owned by the Department. The slide expanded destroying one private residence and physically damaging between ten and 15 other properties. In October 2005, a group of 68 individuals (homeowners in the slide area) and one Homeowners Association later formed into the corporation known as Sycamore Canyon Landslide Repair Inc. (the Corporation).

The Corporation filed a multiple Complaint, a Petition for Writ of Mandate, and a Request for Temporary and Permanent Injunctions against the State of California (Ref. Alexander v. State of California, SBCSC Case No. 01185586).with the Santa Barbara County Superior Court. The plaintiff's main contention is that a project constructed by the Department in FY 2000-01, which entailed the removal of 130,000 cubic yards of dirt from a slide in 1998, caused the slide in January 2005. The Department's legal counsel recommended settlement for approximately \$81,000,000, since there was liability exposure for the substantial damages alleged by the 68 plaintiffs as being caused by the 2005 slide. The settlement includes \$17.8 million for damages, \$3 million payment into a contingency fund, \$50 million to repair the landslide by a private corporation, and \$10.170 million for the attorney's fee award. In addition to the monetary settlement, ownership of the Department's excess property in the landslide area will transfer to the private corporation repairing the slide.

This settlement resolves all plaintiffs' pending claims with a waiver of future claims, as well as release of all future liability against the Department, as a result of the Department's project. It will allow the Department to pursue relinquishment of the roadway with the city of Santa Barbara after the slide is repaired.

The Department is also reviewing its policies relating to actions in response to landslides in the vicinity of State highways. Since this case was still in litigation, this commitment of \$81 million for the 'damage to property' settlement was not included in the R/W capital allocation plan. Resolution G-01-09 delegates authority to the Department to sub-allocate and adjust funds to individual projects for right-of-way activities. The Department has adjusted the funds to accommodate the settlement amount, however, there will not be sufficient funds to cover planned expenditures for the remainder of the year within the original lump sum allocation. The anticipated shortfall of the remaining lump sum allocation could result in delayed delivery of the right-of-way component of projects as currently scheduled.

RESOLUTION:

Resolved, that the amount of \$81,000,000 be augmented to the lump sum Right of Way capital allocation of \$188,000,000, for a total of \$269,000,000, to be allocated from the Budget Act of 2006, Budget Act Items 2660-304-0042, 2660-304-0890, 2660-305-0042, 2660-305-0890, 2660-306-0042, and 2660-306-0890, as a lump sum for Right of Way capital outlay expenditures for Fiscal Year 2006-07.

FY 2006-07 ESTIMATED ALLOCATION OF FUNDS FOR RIGHT-OF-WAY (Dollars in Thousands)

	ORIGINAL ALLOCATION (FM-05-05)	AUGMENTATION	REVISED ALLOCATION
Capital Projects			
STIP	\$93,000	\$0	\$93,000
SHOPP	<u>\$59,000</u>	<u>\$0</u>	<u>\$59,000</u>
Total Capital Projects	\$152,000	\$0	\$152,000
 <u>Specific Categories:</u>			
Minor Projects	\$0	\$0	\$0
Post Certifications	\$28,000	\$0	\$28,000
Damage to Property (Inverse Condemnations)	\$7,000	\$81,000	\$88,000
Project Development Capital	<u>\$1,000</u>	<u>\$0</u>	<u>\$1,000</u>
Total Specific Categories	\$36,000	\$81,000	\$117,000
 <u>Pre-project Mitigation:</u>	\$0	\$0	\$0
 <u>Total Right of Way</u>	\$188,000	\$81,000	\$269,000